

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PAUL CRAFT,

Plaintiff,

v.

MARGARET OUELLETTE, et al.,

Defendants.

Case No. 1:18-cv-899

HON. JANET T. NEFF

OPINION AND ORDER

Plaintiff filed this prisoner civil rights action pursuant to 42 U.S.C. § 1983, and the matter was referred to the Magistrate Judge. Defendants filed a motion for summary judgment (ECF No. 13). Plaintiff filed a response to the motion (ECF Nos. 17-18) as well as a motion seeking additional time to obtain an affidavit (ECF No. 19). Defendants filed a reply to Plaintiff's response (ECF No. 22). On January 22, 2019, the Magistrate Judge issued an Order denying Plaintiff's motion (ECF No. 23) and a Report and Recommendation (R&R), recommending this Court grant Defendants' motion for summary judgment and close this case (ECF No. 24). The matter is presently before the Court on Plaintiff's appeal from the Magistrate Judge's Order (ECF No. 25) and Plaintiff's objections to the Magistrate Judge's Report and Recommendation (ECF Nos. 26-27). Defendants filed a response to Plaintiff's objections (ECF No. 29). The Court denies the appeal, denies the objections, and issues this Opinion and Order.

Plaintiff's Appeal. In the Order denying Plaintiff's motion for additional time to obtain an affidavit, the Magistrate Judge indicated that even assuming Plaintiff had demonstrated both his

need for the discovery and why he had not previously obtained the information, he had failed to provide “any indication or suggestion as to what material facts he expects his expert witness to provide” (Order, ECF No. 23 at PageID.224-225). In his appeal from the Magistrate Judge’s Order, Plaintiff does not dispute that he failed to identify in his motion any material facts his expert witness would provide. Plaintiff instead argues that the Magistrate Judge’s “resolution in this case of denying his motion for extension of time and simultaneously recommending his lawsuit be terminated” was “radically harsh” (ECF No. 25 at PageID.239). Plaintiff’s argument fails to demonstrate that the Magistrate Judge’s Order was either “clearly erroneous or contrary to law.” *See* 28 U.S.C. § 636(b)(1)(A) (setting forth standard of review); *see also* FED. R. CIV. P. 72(a); W.D. Mich. LCivR 72.3(a). Therefore, the appeal is properly denied.

Plaintiff’s Objections. The Magistrate Judge determined that Defendants Ouellette and Corizon, Inc. are both entitled to summary judgment on the merits (R&R, ECF No. 24 at PageID.230, 234). In accordance with 28 U.S.C. § 636(b)(1)(B) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. *See also* W.D. Mich. LCivR 72.3(b).

Regarding Defendant Ouellette, Plaintiff argues that summary judgment is not properly granted where “the refusal to continue a pre-existing medical accommodation for a brimmed hat and long sleeve shirt interferes with prescribed treatment,” the delays “resulted in unnecessary permanent disfigurement,” and the “cancellation of follow-up care interferes with prescribed treatment” (Pl.’s Objs., ECF No. 26 at PageID.244). Plaintiff’s argument fails to demonstrate any factual or legal error by the Magistrate Judge. Rather, Plaintiff merely reiterates the positions he set forth to the Magistrate Judge. As the Magistrate Judge pointed out, allegations of negligent treatment, misdiagnosis, or medical malpractice do not implicate the Eighth Amendment, and

Plaintiff presented no medical evidence establishing that he suffered a detrimental effect as a result of the alleged delay in treatment (R&R, ECF No. 24 at PageID.231, 234).

Regarding Defendant Corizon, Inc., Plaintiff argues that “Corizon’s direct participation in the civil rights violations, sworn to by Plaintiff in his verified complaint, is not protected under the doctrine of respondeat superior” (Pl.’s Objs., ECF No. 26 at PageID.243). This argument also fails to demonstrate any factual or legal error by the Magistrate Judge. As set forth by the Magistrate Judge, Corizon is “not vicariously liable for the actions of its employees and, therefore, ‘may not be sued under § 1983 for an injury inflicted solely by its employees or agents’” (R&R, ECF No. 24 at PageID.229, citing *Thomas v. City of Chattanooga*, 398 F.3d 426, 429 (6th Cir. 2005) (quoting *Monell v. Dep’t of Social Servs.*, 436 U.S. 658, 694 (1978))). Rather, to impose liability against Corizon, Plaintiff must demonstrate that he suffered a violation of his federal rights “because of” a Corizon policy or custom. Plaintiff has not addressed—let alone demonstrated—how he suffered a violation of his federal rights “because of” a Corizon policy or custom.

In sum, Plaintiff’s objections are properly denied. Accordingly, this Court adopts the Magistrate Judge’s Report and Recommendation as the Opinion of this Court. A Judgment will be entered consistent with this Opinion and Order. *See* FED. R. CIV. P. 58. Because this action was filed *in forma pauperis*, this Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal of this decision would not be taken in good faith. *See McGore v. Wrigglesworth*, 114 F.3d 601, 610 (6th Cir. 1997), overruled on other grounds by *Jones v. Bock*, 549 U.S. 199, 206, 211-12 (2007). Therefore:

IT IS HEREBY ORDERED that Plaintiff’s Appeal from the Magistrate Judge’s Order (ECF No. 25) is DENIED.

IT IS FURTHER ORDERED that Plaintiff's Objections (ECF Nos. 26-27) are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 24) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that Defendants' Motion for Summary Judgment (ECF No. 13) is GRANTED.

IT IS FURTHER ORDERED that this Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this decision would not be taken in good faith.

Dated: September 25, 2019

/s/ Janet T. Neff

JANET T. NEFF
United States District Judge